
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 150 Session of
2013

INTRODUCED BY PILEGGI, GREENLEAF, MENSCH, ERICKSON, SCHWANK,
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JANUARY 16, 2013

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF
REPRESENTATIVES, AS AMENDED, NOVEMBER 19, 2013

AN ACT

1 Amending Title 44 (Law and Justice) of the Pennsylvania
2 Consolidated Statutes, in DNA data and testing, further
3 providing for policy, for definitions, for powers and duties
4 of State Police, for State DNA Data Base, for State DNA Data
5 Bank, for State Police recommendation of additional offenses,
6 for procedural compatibility with FBI and for DNA sample
7 required upon conviction, delinquency adjudication and
8 certain ARD cases; providing for collection from persons
9 accepted from other jurisdictions; further providing for
10 procedures for withdrawal, collection and transmission of DNA
11 samples, for procedures for conduct, disposition and use of
12 DNA analysis; providing for request for modified DNA search;
13 and further providing for DNA data base exchange, for
14 expungement and for mandatory cost.

15 The General Assembly of the Commonwealth of Pennsylvania
16 hereby enacts as follows:

17 Section 1. Sections 2302, 2303, 2311(2), 2312, 2313, 2314,
18 2315 and 2316 of Title 44 of the Pennsylvania Consolidated
19 Statutes are amended to read:

20 § 2302. Policy.

21 The General Assembly finds and declares that:

1 (1) DNA data banks are an important tool in criminal
2 investigations, in [the exclusion of] excluding innocent
3 individuals who are the subject of criminal investigations or
4 prosecutions and in [deterring and detecting recidivist acts]
5 detecting and deterring repeated crimes by the same
6 individual.

7 (2) Several states have enacted laws requiring persons
8 arrested, charged or convicted of certain crimes, especially
9 sex offenses, to provide genetic samples for DNA profiling.

10 (2.1) Several states have authorized the disclosure of
11 DNA profiles in their state's DNA data base where comparison
12 of DNA linked to a crime with the known offender DNA profile
13 in the data base establishes the likelihood of a close
14 familial relationship between the two.

15 (3) Moreover, it is the policy of the Commonwealth to
16 assist Federal, State and local criminal justice and law
17 enforcement agencies in the identification and detection of
18 individuals in criminal investigations.

19 (4) It is therefore in the best interest of the
20 Commonwealth to establish a DNA data base and a DNA data bank
21 containing DNA samples submitted by individuals arrested for,
22 charged with, convicted of, adjudicated delinquent for or
23 accepted into ARD for criminal homicides, felony sex offenses
24 and other specified offenses.

25 (5) It is in the best interest of the Commonwealth to
26 authorize the State Police to use DNA analysis and to
27 identify these individuals to a criminal justice agency in
28 certain cases.

29 § 2303. Definitions.

30 The following words and phrases when used in this chapter

1 shall have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

3 "Accredited forensic DNA laboratory." A forensic DNA
4 laboratory that has received accreditation by an accrediting
5 body nationally recognized within the forensic science community
6 in accordance with the FBI Quality Assurance Standards to
7 perform forensic DNA testing and is in compliance with FBI
8 Quality Assurance Standards.

9 "ARD." Accelerated Rehabilitative Disposition.

10 "Arrest." The taking or keeping of a person in custody by
11 legal authority or proceedings commenced by a police complaint
12 that is proceeded against by summons or by a petition filed
13 pursuant to 42 Pa.C.S. § 6321(a)(3) (relating to commencement of
14 proceedings).

15 "CODIS." The [term is derived from] Combined DNA Index
16 System[, the Federal Bureau of Investigation's national DNA
17 identification index system that allows the storage and exchange
18 of DNA records submitted by state and local forensic DNA
19 laboratories] established and maintained by the Federal Bureau
20 of Investigation.

21 "Commissioner." The Commissioner of the Pennsylvania State
22 Police.

23 "Crime scene DNA profile." A DNA profile derived from a DNA
24 sample recovered from a victim, crime scene or item linked to a
25 crime, which may have originated from a perpetrator.

26 "Criminal homicide." Any of the following:

27 (1) 18 Pa.C.S. § 2501 (relating to criminal homicide).

28 (2) 18 Pa.C.S. § 2502 (relating to murder).

29 (3) 18 Pa.C.S. § 2503 (relating to voluntary
30 manslaughter).

1 (4) 18 Pa.C.S. § 2504 (relating to involuntary
2 manslaughter), when the offense is graded as a felony.

3 (5) 18 Pa.C.S. § 2505 (relating to causing or aiding
4 suicide), when the offense is graded as a felony.

5 (6) 18 Pa.C.S. § 2506 (relating to drug delivery
6 resulting in death).

7 (7) 18 Pa.C.S. § 2507 (relating to criminal homicide of
8 law enforcement officer).

9 (8) 18 Pa.C.S. § 2603 (relating to criminal homicide of
10 unborn child).

11 (9) 18 Pa.C.S. § 2604 (relating to murder of unborn
12 child).

13 (10) 18 Pa.C.S. § 2605 (relating to voluntary
14 manslaughter of unborn child).

15 "Criminal justice agency." A criminal justice agency as
16 defined in 18 Pa.C.S. § 9102 (relating to definitions).

17 "DNA." Deoxyribonucleic acid[. DNA is located in the cells
18 and provides an individual's personal genetic blueprint. DNA]
19 located in the chromosomes or mitochondria of a living
20 organism's cells which encodes genetic information that is the
21 basis of human heredity and forensic identification.

22 "DNA record." DNA profile and identification information
23 stored in the State DNA Data Base or the Combined DNA Index
24 System for the purpose of generating investigative leads or
25 supporting statistical interpretation of DNA test results. The
26 term includes nuclear and mitochondrial typing. The DNA record
27 is the result obtained from the DNA typing tests. [The DNA
28 record is comprised of the characteristics of a DNA sample which
29 are of value in establishing the identity of individuals. The
30 results of all DNA identification tests on an individual's DNA

1 sample are also collectively referred to as the DNA profile of
2 an individual.]

3 "DNA sample." [A blood or tissue sample provided by any
4 person with respect to offenses covered by this chapter or
5 submitted to the Pennsylvania State Police laboratory pursuant
6 to the former act of May 28, 1995 (1st Sp.Sess., P.L.1009,
7 No.14), known as the DNA Detection of Sexual and Violent
8 Offenders Act, to the former 42 Pa.C.S. Ch. 47 (relating to DNA
9 data and testing) or to this chapter for analysis or storage, or
10 both.] A sample of biological material suitable for DNA
11 analysis.

12 "FBI." The Federal Bureau of Investigation.

13 "Felony sex offense." A felony offense or an attempt,
14 conspiracy or solicitation to commit a felony offense under any
15 of the following:

16 18 Pa.C.S. Ch. 31 (relating to sexual offenses).

17 18 Pa.C.S. § 3130 (relating to conduct relating to sex
18 offenders).

19 18 Pa.C.S. § 4302 (relating to incest).

20 18 Pa.C.S. § [5902(c)(1)(iii) and (iv)] 5902(c)(1)(iv)
21 (relating to prostitution and related offenses).

22 18 Pa.C.S. § 5903(a) (relating to obscene and other
23 sexual materials and performances) where the offense
24 constitutes a felony.

25 [18 Pa.C.S. § 6312 (relating to sexual abuse of
26 children).

27 18 Pa.C.S. § 6318 (relating to unlawful contact with
28 minor) where the most serious underlying offense for which
29 the defendant contacted the minor is graded as a felony.

30 18 Pa.C.S. § 6320 (relating to sexual exploitation of

1 children).]

2 Any offense graded as a felony requiring registration
3 under 42 Pa.C.S. Ch. 97 Subch. H (relating to registration of
4 sexual offenders).

5 "Forensic DNA laboratory." A laboratory that performs
6 forensic DNA testing for the purposes of identification.

7 "Forensic DNA testing." A test that applies techniques from
8 molecular biology to analyze deoxyribonucleic acid (DNA) to
9 identify characteristics unique to a particular individual.

10 "Former DNA Act." The former act of May 28, 1995 (1st
11 Sp.Sess., P.L.1009, No.14), known as the DNA Detection of Sexual
12 and Violent Offenders Act.

13 "Fund." The DNA Detection Fund reestablished in section 2335
14 (relating to DNA Detection Fund).

15 "Human behavioral genetic research." The study of the
16 possible genetic underpinnings of behaviors, including, but not
17 limited to, aggression, substance abuse, social attitudes,
18 mental abilities, sexual activity and eating habits.

19 "Law enforcement identification purposes." Assisting in the
20 determination of the identity of an individual whose DNA is
21 contained in a biological sample.

22 "Mitochondrial DNA analysis." A method that applies
23 techniques from molecular biology to analyze DNA found in the
24 mitochondria of cells.

25 "Modified DNA search." A search of the State DNA Data Base,
26 using scientifically valid and reliable methods in accordance
27 with rules, regulations and guidelines promulgated under section
28 2318 (relating to procedures for conduct, disposition and use of
29 DNA analysis), to determine that a crime scene DNA profile is
30 sufficiently likely to have originated from a close relative of

1 an individual whose DNA profile is recorded in the State DNA
2 Data Base.

3 "Other specified offense." Any of the following:

4 (1) A felony offense, other than criminal homicide or a
5 felony sex offense.

6 (2) [An offense under 18 Pa.C.S. § 2910 (relating to
7 luring a child into a motor vehicle or structure) or 3126
8 (relating to indecent assault) or an attempt to commit such
9 an offense] (Reserved).

10 (3) [An offense subject to 42 Pa.C.S. Ch. 97 Subch. H
11 (relating to registration of sexual offenders)] (Reserved).

12 (4) 18 Pa.C.S. § 2701(b)(2) (relating to simple
13 assault).

14 (5) 18 Pa.C.S. § 2902 (relating to unlawful restraint).

15 (6) 18 Pa.C.S. § 3503(b)(1)(v) (relating to criminal
16 trespass).

17 (7) 18 Pa.C.S. § 4303 (relating to concealing death of
18 child).

19 (8) 18 Pa.C.S. § 4305 (relating to dealing in infant
20 children).

21 (9) A misdemeanor offense requiring registration under
22 42 Pa.C.S. Ch. 97 Subch. H (relating to registration of
23 sexual offenders).

24 "State Police." The Pennsylvania State Police.

25 "Y chromosome analysis." A method that applies techniques
26 from molecular biology to examine DNA found on the Y chromosome.

27 § 2311. Powers and duties of State Police.

28 In addition to any other powers and duties conferred by this
29 chapter, the State Police shall:

30 * * *

1 (2) Promulgate [rules and regulations], as necessary,
2 rules, regulations and guidelines to carry out the provisions
3 of this chapter.

4 * * *

5 § 2312. State DNA Data Base.

6 [The State DNA Data Base is reestablished. It shall be
7 administered by the State Police and provide DNA records to the
8 FBI for storage and maintenance by CODIS.] A Statewide DNA Data
9 Base is established within the State Police to store DNA records
10 from DNA samples submitted for analysis and storage to the State
11 Police laboratory under the former DNA Act, the former
12 provisions of 42 Pa.C.S. Ch. 47 (relating to DNA data and
13 testing) or to this chapter, and to provide DNA records to
14 CODIS. The State DNA Data Base shall have the capability
15 provided by computer software and procedures administered by the
16 State Police to store and maintain DNA records related to:

17 (1) forensic casework;

18 (2) [convicted] arrestees and convicted or delinquency
19 adjudicated offenders required to provide a DNA sample under
20 this chapter; and

21 (3) anonymous DNA records used for statistical research
22 [or] on the frequency of DNA genotypes, quality control or
23 the development of new DNA identification methods.

24 § 2313. State DNA Data Bank.

25 The State DNA Data Bank is reestablished. It shall serve as
26 the repository of DNA samples collected under this chapter or
27 under prior law.

28 § 2314. State Police recommendation of additional offenses and
29 annual report.

30 (a) Recommendation.--The State Police may recommend to the

1 General Assembly that it enact legislation for the inclusion of
2 additional offenses for which DNA samples shall be taken and
3 otherwise subjected to the provisions of this chapter. In
4 determining whether to recommend additional offenses, the State
5 Police shall consider those offenses for which DNA testing will
6 have a substantial impact on the detection and identification of
7 sex offenders and [violent] other offenders.

8 (b) Annual report.--No later than August 1 of each year, the
9 commissioner shall submit to the Governor's Office, the majority
10 and minority chairmen of the Senate Judiciary Committee and the
11 majority and minority chairmen of the House Judiciary Committee,
12 a written report containing information regarding the collection
13 and testing of DNA samples under the provisions of this chapter.
14 The report must include, but need not be limited to, the
15 following information pertaining to the previous fiscal year:

16 (1) The number of DNA samples submitted from individuals
17 upon arrest.

18 (2) The age, race and sex of arrestees from whom DNA
19 samples were submitted upon arrest and the age, race and sex
20 of those convicted from whom DNA samples were submitted upon
21 conviction.

22 (3) The fiscal impact on the State Police of collecting
23 DNA samples from persons convicted of offenses.

24 (4) The fiscal impact on the State Police of collecting
25 DNA samples from arrestees.

26 (5) The number of DNA samples collected at arrest that
27 were expunged from the Statewide DNA Data Base.

28 (6) The average length of time between the receipt of
29 DNA samples from arrestees and from those convicted of
30 offenses and the completion of forensic DNA testing of each

1 of those categories of DNA samples.

2 (7) Recommendations, if any, under this section for the
3 inclusion of additional offenses for which DNA samples must
4 be collected or recommendations for the removal of specific
5 offenses from the categories requiring the collection of DNA
6 samples from arrestees or persons convicted of crimes.

7 § 2315. Procedural compatibility with FBI.

8 The DNA identification system [as] established by the State
9 Police shall be compatible with the procedures [specified]
10 established by the FBI Quality Assurance Standards for forensic
11 DNA testing laboratories and DNA data basing laboratories and
12 CODIS policies and procedures, including use of comparable test
13 procedures, laboratory equipment, supplies and computer
14 software.

15 § 2316. DNA sample required [upon conviction, delinquency
16 adjudication and certain ARD cases].

17 (a) [General rule] Conviction or adjudication.--A person who
18 is convicted or adjudicated delinquent for criminal homicide, a
19 felony sex offense or other specified offense or who is or
20 remains incarcerated for criminal homicide, a felony sex offense
21 or other specified offense on or after the effective date of
22 this chapter shall have a DNA sample [drawn] collected as
23 follows:

24 (1) A person who is sentenced or receives a delinquency
25 disposition to a term of confinement for an offense covered
26 by this subsection shall have a DNA sample [drawn] collected
27 upon intake to a prison, jail or juvenile detention facility
28 or any other detention facility or institution. If the person
29 is already confined at the time of sentencing or
30 adjudication, the person shall have a DNA sample [drawn]

1 collected immediately after the sentencing or adjudication.

2 If a DNA sample is not timely [drawn] collected in accordance
3 with this section, the DNA sample may be [drawn] collected
4 any time thereafter by the prison, jail, juvenile detention
5 facility, detention facility or institution.

6 (2) A person who is convicted or adjudicated delinquent
7 for an offense covered by this subsection shall have a DNA
8 sample [drawn] collected as a condition for any sentence or
9 adjudication which disposition will not involve an intake
10 into a prison, jail, juvenile detention facility or any other
11 detention facility or institution.

12 (3) Under no circumstances shall a person who is
13 convicted or adjudicated delinquent for an offense covered by
14 this subsection be released in any manner after such
15 disposition unless and until a DNA sample [has been
16 [withdrawn] and fingerprints have been collected.

17 (b) Condition of release, probation or parole.--

18 (1) A person who has been convicted or adjudicated
19 delinquent for criminal homicide, a felony sex offense or
20 other specified offense and who serves a term of confinement
21 in connection therewith after June 18, 2002, shall not be
22 released in any manner unless and until a DNA sample has been
23 [withdrawn] collected.

24 (2) This chapter shall apply to incarcerated persons
25 convicted or adjudicated delinquent for criminal homicide, a
26 felony sex offense or other specified offense prior to June
27 19, 2002.

28 (3) This chapter shall apply to incarcerated persons and
29 persons on probation or parole who were convicted or
30 adjudicated delinquent for criminal homicide, a felony sex

1 offense or other specified offenses prior to the effective
2 date of this paragraph.

3 (c) Certain ARD cases.--Acceptance into ARD as a result of a
4 criminal charge for criminal homicide, a felony sex offense or
5 other specified offense filed after June 18, 2002, [may] shall
6 be conditioned upon the [giving] collection of a DNA sample.

7 (c.1) Arrest.--A person who is arrested in this Commonwealth
8 for criminal homicide, felony sex offenses or other specified
9 offenses shall have a DNA sample collected as follows:

10 (1) A person who is arrested for an offense covered
11 under this subsection shall have a DNA sample collected no <--
12 later than five days after the date of the arrest. AT THE <--
13 TIME FINGERPRINTS ARE COLLECTED PURSUANT TO 18 PA.C.S. § 9112
14 (RELATING TO MANDATORY FINGERPRINTING). DNA COLLECTED SHALL
15 BE SUBMITTED TO THE PENNSYLVANIA STATE POLICE WITHIN 48 HOURS
16 IN THE MANNER PRESCRIBED BY RULES, REGULATIONS OR GUIDELINES
17 PROMULGATED UNDER SECTION 2318 (RELATING TO PROCEDURES FOR
18 CONDUCT, DISPOSITION AND USE OF DNA ANALYSIS).

19 (2) A PERSON WHO IS ARRESTED FOR AN OFFENSE COVERED
20 UNDER THIS SUBSECTION MAY NOT BE RELEASED UNTIL A DNA SAMPLE
21 AND FINGERPRINTS HAVE BEEN COLLECTED.

22 ~~(2)~~ (3) If a DNA sample is not timely collected in <--
23 accordance with this subsection, the DNA sample may be
24 collected any time thereafter by a law enforcement official,
25 prison, jail, juvenile detention facility, detention facility
26 or institution.

27 ~~(3)~~ A person who is arrested for an offense covered <--
28 under this subsection may not be released unless and until a
29 DNA sample and fingerprints have been collected.

30 (4) This subsection shall apply as follows:

1 (i) Beginning one year after the effective date of
2 this subsection, any person arrested for criminal
3 homicide shall have a DNA sample collected under this
4 subsection upon arrest.

5 (ii) Beginning two years after the effective date of
6 this subsection, any person arrested for a felony sex
7 offense shall have a DNA sample collected under this
8 subsection upon arrest.

9 (iii) Beginning three years after the effective date
10 of this subsection, any person arrested for any other
11 specified offense shall have a DNA sample collected under
12 this subsection upon arrest.

13 (d) Supervision of DNA samples.--All DNA samples taken
14 pursuant to this section shall be taken in accordance with
15 rules, regulations and guidelines promulgated by the State
16 Police in consultation with the Department of Corrections.

17 (d.1) Mandatory submission.--The requirements of this
18 chapter are mandatory and apply regardless of whether a court
19 advises a person that a DNA sample must be provided to the State
20 DNA Data Base and the State DNA Data Bank as a result of [a] an
21 arrest, conviction or adjudication of delinquency. A person who
22 has been sentenced to death or life imprisonment without the
23 possibility of parole or to any term of incarceration is not
24 exempt from the requirements of this chapter. Any person subject
25 to this chapter who has not provided a DNA sample for any
26 reason, including because of an oversight or error, shall
27 provide a DNA sample for inclusion in the State DNA Data Base
28 and the State DNA Data Bank after being notified by authorized
29 law enforcement or corrections personnel. If a person provides a
30 DNA sample which is not adequate for any reason, the person

1 shall provide another DNA sample for inclusion in the State DNA
2 Data Base and the State DNA Data Bank after being notified by
3 authorized law enforcement or corrections personnel. The
4 collection of a DNA sample under this chapter shall not be
5 required if the authorized law enforcement or corrections
6 official confirms that a DNA sample from the person has already
7 been validly collected and provided to the State DNA Data Base <--
8 and the State DNA Data Bank. BANK AND A DNA RECORD FOR THE <--
9 PERSON EXISTS IN THE STATE DNA DATA BASE.

10 (e) Definition.--As used in this section, the term
11 "released" means any release, parole, furlough, work release,
12 prerelease or release in any other manner from a prison, jail,
13 juvenile detention facility or any other place of confinement.

14 Section 2. Title 44 is amended by adding a section to read:
15 § 2316.1. Collection from persons accepted from other
16 jurisdictions.

17 (a) Conditional acceptance.--When a person is accepted into
18 this Commonwealth for supervision from another jurisdiction
19 under the Interstate Compact for Supervision of Adult Offenders,
20 other reciprocal agreement with a Federal, state or county
21 agency, or a provision of law, whether or not the person is
22 confined or released, the acceptance shall be conditioned on the
23 offender's providing DNA samples under this chapter if the
24 offender has a past or present Federal, state or military court
25 conviction or adjudication that is equivalent to criminal
26 homicide, a felony sex offense or other specified offense as
27 determined by the Pennsylvania Board of Probation and Parole.
28 Additional DNA samples shall not be required if a DNA sample is
29 currently on file with the State DNA Data BANK AND A DNA RECORD <--
30 IS CURRENTLY ON FILE IN THE STATE DNA DATA Base.

1 (b) Time period.--

2 (1) If the person accepted under subsection (a) is not
3 confined, the DNA sample and fingerprints required under this
4 chapter shall be provided within five calendar days after the
5 person reports to the supervising agent or within five
6 calendar days of notice to the person, whichever occurs
7 first. The person shall appear and the DNA samples shall be
8 collected in accordance with the provisions of this chapter.

9 (2) If the person accepted under subsection (a) is
10 confined, the person shall provide the DNA sample and
11 fingerprints required by this chapter within five calendar
12 days after the person is received at a place of incarceration
13 or confinement.

14 Section 3. Sections 2317 heading and (a) (1) and (b) and
15 2318(a) and (c) of Title 44 are amended to read:

16 § 2317. Procedures for [withdrawal,] collection and
17 transmission of DNA samples.

18 (a) [Drawing] Collection of DNA samples.--

19 (1) Each DNA sample required to be [drawn] collected
20 pursuant to [section] sections 2316 (relating to DNA sample
21 required [upon conviction, delinquency adjudication and
22 certain ARD cases]) and 2316.1 (relating to collection from
23 persons accepted from other jurisdictions) from persons who <--
24 are incarcerated or confined shall be [drawn] collected at
25 the place of incarceration or confinement as provided for in
26 section 2316. DNA samples from persons who are not ordered or
27 sentenced to a term of confinement shall be [drawn] collected
28 at a prison, jail unit, juvenile facility or other facility
29 to be specified by the court. [Only] For DNA blood samples,
30 PERSONS ACCEPTED FROM OTHER JURISDICTIONS) [FROM] SHALL BE <--

1 COLLECTED AS FOLLOWS:

2 (I) FROM PERSONS WHO ARE INCARCERATED OR CONFINED,
3 THE DNA SAMPLE SHALL BE [DRAWN] COLLECTED AT THE PLACE OF
4 INCARCERATION OR CONFINEMENT AS PROVIDED FOR IN SECTION
5 2316 OR 2316.1.

6 (II) DNA SAMPLES FROM PERSONS WHO ARE NOT [ORDERED
7 OR SENTENCED TO A TERM OF CONFINEMENT] INCARCERATED OR
8 CONFINED SHALL BE [DRAWN] COLLECTED AS PRESCRIBED IN
9 SECTIONS 2316 AND 2316.1 OR AT A PRISON, JAIL UNIT,
10 JUVENILE FACILITY OR OTHER FACILITY [TO BE] SPECIFIED BY
11 THE COURT OR SUPERVISING AGENT. [ONLY] FOR DNA BLOOD
12 SAMPLES, only those individuals qualified to draw DNA
13 blood samples in a medically approved manner shall draw a
14 DNA blood sample to be submitted for DNA analysis. [Such
15 sample] DNA samples and the set of fingerprints provided
16 for in paragraph (2) shall be delivered to the State
17 Police within 48 hours of [drawing] collecting the
18 sample.

19 * * *

20 (b) Limitation on liability.--Persons authorized to [draw]
21 collect DNA samples under this section shall not be criminally
22 liable for withdrawing a DNA sample and transmitting test
23 results pursuant to this chapter if they perform these
24 activities in good faith and shall not be civilly liable for
25 such activities when the person acted in a reasonable manner
26 according to generally accepted medical and other professional
27 practices.

28 * * *

29 § 2318. Procedures for conduct, disposition and use of DNA
30 analysis.

1 (a) Procedures.--

2 (1) The State Police shall [prescribe] promulgate, as
3 necessary, rules, regulations and guidelines to implement
4 this chapter, including procedures to be used in the
5 collection, submission, identification, analysis, storage and
6 disposition of DNA samples and typing results of DNA samples
7 submitted under the former DNA Act, former provisions of 42
8 Pa.C.S. Ch. 47 (relating to DNA data and testing) or this
9 chapter.

10 (2) The DNA sample typing results shall be securely
11 stored in the State DNA Data Base, and records of testing
12 shall be retained on file with the State Police consistent
13 with the procedures established by the FBI Quality Assurance
14 Standards for forensic DNA testing laboratories and DNA data
15 basing laboratories and CODIS policies and procedures. NO <--
16 SAMPLE TYPING RESULTS FROM A SAMPLE COLLECTED PURSUANT TO
17 SECTION 2316(C.1) (RELATING TO DNA SAMPLE REQUIRED) SHALL BE
18 STORED IN THE STATE DNA DATA BASE OR SUBMITTED TO THE
19 NATIONAL DNA INDEX SYSTEM UNTIL THE DEFENDANT HAS BEEN HELD
20 FOR COURT FOR A QUALIFYING OFFENSE AFTER GRAND JURY
21 INDICTMENT OR WAIVER OR PRELIMINARY HEARING OR WAIVER.

22 (3) These procedures shall also include quality
23 assurance guidelines to ensure that DNA identification
24 records meet standards for accredited forensic DNA
25 laboratories which submit DNA records to the State DNA Data
26 Base.

27 (4) The rules, regulations and guidelines shall address
28 the following:

29 (i) Verification of accreditation.

30 (ii) Compliance with FBI Quality Assurance

1 Standards, including continuing education requirements
2 for the personnel of forensics DNA testing laboratories.

3 * * *

4 (c) Use of tests.--

5 (1) Except as otherwise provided in section 2319(c)
6 (relating to DNA data base exchange), the tests to be
7 performed on each DNA sample shall be used only for law
8 enforcement identification purposes or to assist in the
9 recovery or identification of human remains from disasters or
10 for other humanitarian identification purposes, including
11 identification of missing persons.

12 (2) No DNA sample or DNA record acquired under this
13 chapter may be used for human behavioral genetic research or
14 for nonlaw enforcement or nonhumanitarian identification
15 purposes.

16 * * *

17 Section 4. Title 44 is amended by adding a section to read:

18 § 2318.1. Request for modified DNA search.

19 (a) General rule.--

20 (1) A criminal justice agency may request in writing
21 that the State Police perform a modified DNA search in an
22 unsolved case and shall provide information as required by
23 the State Police.

24 (2) The State Police may grant a request to conduct a
25 modified DNA search if the State Police determine that the
26 request complies with subsection (d)(2).

27 (b) Modified DNA search.--

28 (1) The State Police may conduct a modified DNA search
29 if it grants a request under subsection (a)(2).

30 (2) The State Police may conduct a modified DNA search

1 in unsolved cases without the request of a criminal justice
2 agency if the State Police determine that they would have
3 granted a request had a request been made by a criminal
4 justice agency.

5 (3) In all cases, the State Police shall use procedures
6 for conducting a modified DNA search that are consistent with
7 the rules, regulations and guidelines promulgated under
8 section 2318 (relating to procedures for conduct, disposition
9 and use of DNA analysis).

10 (c) Release of information from a modified DNA search.--The
11 State Police shall provide the requesting criminal justice
12 agency with personally identifying information on individuals
13 whose DNA records were identified through a modified DNA search.

14 (d) Requirements.--

15 (1) The State Police shall require a criminal justice
16 agency to provide assurances and information in support of
17 its request for a modified DNA search, including:

18 (i) A representation that a modified DNA search is
19 necessary for law enforcement identification purposes in
20 an unsolved case.

21 (ii) A representation that all other investigative
22 leads have been pursued.

23 (iii) A commitment to further investigate the case
24 if personal identifying information from a modified DNA
25 search is provided.

26 (iv) Any other information the State Police deem
27 necessary.

28 (2) The State Police may grant a modified DNA search
29 request if the State Police determine that:

30 (i) The crime scene DNA profile has sufficient size,

1 quality and integrity.

2 (ii) The crime scene DNA profile has previously been
3 subjected to a routine DNA search against the State DNA
4 Data Base AND THE NATIONAL DNA INDEX SYSTEM. <--

5 (iii) The modified DNA search is necessary for law
6 enforcement identification purposes in an unsolved case.

7 (iv) The criminal justice agency has pursued all
8 other investigative leads.

9 (v) Any relevant consideration, including factors or
10 requirements considered by any other jurisdiction,
11 supports granting the request.

12 (3) The State Police procedures, promulgated under
13 section 2318, to conduct modified DNA searches shall be based
14 on scientifically valid and reliable methods to determine
15 that a crime scene DNA profile is sufficiently likely to have
16 originated from a close relative of an individual whose DNA
17 profile is recorded in the State DNA Data Base OR THE <--
18 NATIONAL DNA INDEX SYSTEM. The State Police may require the
19 following:

20 (i) An analysis of the rarity in the relevant
21 population of each shared DNA characteristic.

22 (ii) An analysis of the pattern of shared DNA
23 characteristics.

24 (iii) Y chromosome analysis.

25 (iv) Mitochondrial DNA analysis.

26 (v) Any other suitable method designed to determine
27 that a crime scene DNA profile originated from a close
28 relative of an individual in the State DNA Data Base OR <--
29 THE NATIONAL DNA INDEX SYSTEM.

30 Section 5. Sections 2319, 2321 and 2322 of Title 44 are

1 amended to read:

2 § 2319. DNA data base exchange.

3 (a) Receipt of DNA samples by State Police.--It shall be the
4 duty of the State Police to receive DNA samples, to store, to
5 perform analysis or to contract for DNA typing analysis with [a
6 qualified] an accredited forensic DNA laboratory that meets the
7 [guidelines] rules, regulations and guidelines under section
8 2318 (relating to procedures for conduct, disposition and use of
9 DNA analysis) as established by the State Police, to classify
10 and to file the DNA record of identification characteristic
11 profiles of DNA samples submitted under the former DNA Act,
12 former provisions of 42 Pa.C.S. Ch. 47 (relating to DNA data and
13 testing) or this chapter and to make such information available
14 as provided in this section. The State Police may contract [out]
15 for the storage of DNA typing analysis [and may contract out] or
16 DNA typing analysis to [a qualified] an accredited forensic DNA
17 laboratory that meets the rules, regulations and guidelines as
18 established by the State Police under section 2318. The results
19 of the DNA profile of individuals in the State DNA Data Base
20 shall be made available:

21 (1) to criminal justice agencies or [approved crime]
22 CODIS-participating DNA laboratories which serve these
23 agencies; or

24 (2) upon written or electronic request and in
25 furtherance of an official investigation of a criminal
26 offense or offender or suspected offender.

27 (b) Methods of obtaining information.--The State Police
28 shall [adopt] promulgate, as necessary, rules, regulations and
29 guidelines governing the methods of obtaining information from
30 the State DNA Data Base and CODIS and procedures for

1 verification of the identity and authority of the requester.

2 (c) Population data base.--

3 (1) The State Police may establish a separate population
4 data base comprised of DNA samples obtained under this
5 chapter after all personal identification is removed.

6 (2) The State Police may share or disseminate the
7 population data base with other criminal justice agencies or
8 [crime] CODIS-participating DNA laboratories that serve to
9 assist the State Police with statistical data bases.

10 (3) The population data base may be made available to
11 and searched by other agencies participating in the CODIS
12 system.

13 (d) Separate category.--The State Police shall create a
14 separate category within the data base to store DNA samples and
15 records collected upon arrest under section 2316(c.1) (relating
16 to DNA sample required).

17 § 2321. Expungement.

18 [(a) General rule.--A person whose DNA sample, record or
19 profile has been included in the State DNA Data Bank or the
20 State DNA Data Base pursuant to the former DNA Act, former 42
21 Pa.C.S. Ch. 47 (relating to DNA data and testing) or this
22 chapter may request expungement on the grounds that the
23 conviction or delinquency adjudication on which the authority
24 for including that person's DNA sample, record or profile was
25 based has been reversed and the case dismissed or that the DNA
26 sample, record or profile was included in the State DNA Data
27 Bank or the State DNA Data Base by mistake.

28 (b) Duty of State Police.--The State Police shall purge all
29 records and identifiable information in the State DNA Data Bank
30 or State DNA Data Base pertaining to the person and destroy each

1 sample, record and profile from the person upon:

2 (1) receipt of a written request for expungement
3 pursuant to this section and a certified copy of the final
4 court order reversing and dismissing the conviction; or

5 (2) clear and convincing proof that the sample record or
6 profile was included by mistake.]

7 (a) General rule.--A person whose DNA sample, record or
8 profile has been included in the State DNA Data Bank or the
9 State DNA Data Base under the former DNA Act, former provisions
10 of 42 Pa.C.S. Ch. 47 (relating to DNA data and testing) or this
11 chapter may have the DNA sample, record or profile expunged in
12 accordance with this section.

13 (b) Removal by request.--A person whose DNA sample, record
14 or profile has been included in the State DNA Data Bank or the
15 State DNA Data Base under the former DNA Act, former provisions
16 of 42 Pa.C.S. Ch. 47 or this chapter may file a written request
17 with the State Police on the grounds that the DNA sample, record
18 or profile be removed on the grounds that the DNA sample, record
19 or profile was included in the State DNA Data Bank or the State
20 DNA Data Base by mistake. If the State Police grants the
21 request, the request shall be processed at no cost and the State
22 Police shall provide written notice of the removal to the person
23 and his attorney of record, if any, within 60 days after
24 destroying the DNA sample, record and profile. If the State
25 Police erroneously denies the request, the person may request <--
26 expungement of the DNA sample, record or profile under
27 subsection (b.1).

28 ~~(b.1) Expungement by court order. The following shall~~
29 ~~apply:~~

30 ~~(1) Except as provided under paragraph (2), a person may~~

1 ~~request the court of common pleas of the county where the~~
2 ~~original charges were filed to~~ FILE A REQUEST FOR EXPUNGEMENT <--
3 OF THE DNA SAMPLE, RECORD OR PROFILE WITH THE COURT OF COMMON
4 PLEAS OF THE COUNTY WHERE THE ORIGINAL CHARGES WERE FILED OR
5 THE ARREST FOR WHICH THE DNA SAMPLE, RECORD OR PROFILE
6 ORIGINATED WAS MADE. UPON RECEIPT OF A REQUEST FOR
7 EXPUNGEMENT, THE COURT SHALL SERVE NOTICE UPON THE DISTRICT
8 ATTORNEY WHO SHALL FILE AND SERVE OBJECTIONS, IF ANY, WITHIN
9 30 DAYS OF SERVICE OF NOTICE. AT A HEARING ON THE REQUEST,
10 THE DISTRICT ATTORNEY SHALL HAVE THE BURDEN OF SHOWING BY A
11 PREPONDERANCE OF THE EVIDENCE THAT THE SAMPLE, RECORD OR
12 PROFILE SHOULD NOT BE REMOVED.

13 (B.1) EXPUNGEMENT BY COURT ORDER.--THE FOLLOWING SHALL
14 APPLY:

15 (1) EXCEPT AS PROVIDED UNDER PARAGRAPHS (2) AND (3), THE
16 COURT OF COMMON PLEAS OF THE COUNTY WHERE THE ORIGINAL
17 CHARGES WERE FILED OR THE ARREST FOR WHICH THE DNA SAMPLE,
18 RECORD OR PROFILE ORIGINATED WAS MADE MAY issue an order
19 directing the expungement of the DNA sample, record or
20 profile pertaining to the person in the State DNA Data Bank
21 or the State DNA Data Base in the following instances:

22 (i) the conviction or delinquency adjudication for
23 which the person's DNA sample was collected has been
24 reversed and no appeal is pending;

25 (ii) the charge for which the DNA sample was taken
26 has been dismissed, no appeal is pending and the
27 prosecuting authority is barred from seeking a retrial <--
28 FURTHER PROSECUTION; <--

29 (iii) there has been a judgment of acquittal on the
30 charge for which the DNA sample was taken AND NO FURTHER <--

1 APPEAL IS PENDING;

2 (iv) the person from whom the DNA sample was taken
3 was not charged with a crime for which a DNA sample is
4 authorized to be taken under this chapter;

5 (v) the prosecuting authority has expressly declined
6 to prosecute the charge for which the DNA sample was
7 taken;

8 (vi) the charge for which the DNA sample was taken
9 was not filed within the statute of limitations;

10 (vii) the person was granted an unconditional pardon
11 for the crime for which the DNA sample was taken; or

12 ~~(viii) the DNA sample, record or profile was~~ <--
13 ~~included in the State DNA Data Bank or State DNA Data~~
14 ~~Base by mistake and the State Police has erroneously~~
15 ~~refused to grant the person's request for removal under~~
16 ~~subsection (b).~~

17 (2) Paragraph (1) AND SUBSECTION (B) shall not apply if <--
18 the person has been arrested, charged, convicted or
19 adjudicated delinquent for any other crime for which a DNA
20 sample is required to be collected under this chapter.

21 ~~(3) The court shall give ten days' prior notice to the~~ <--
22 ~~district attorney of the county where the original charges~~
23 ~~were filed of any application for expungement under this~~
24 ~~subsection.~~

25 (3) THE COURT MAY NOT ORDER EXPUNGEMENT PRIOR TO 30 DAYS <--
26 AFTER SERVING NOTICE TO THE DISTRICT ATTORNEY. WITHIN THE 30-
27 DAY PERIOD THE DISTRICT ATTORNEY MAY FILE OBJECTIONS TO THE
28 EXPUNGEMENT. IF THE DISTRICT ATTORNEY FILES OBJECTIONS, A
29 HEARING SHALL BE HELD AT WHICH THE BURDEN SHALL BE ON THE
30 DISTRICT ATTORNEY TO SHOW, BY A PREPONDERANCE OF THE

1 EVIDENCE, THAT NONE OF THE CIRCUMSTANCES IN PARAGRAPH (1) ARE
2 PRESENT OR, EXCEPT FOR A MOTION FILED UNDER SUBPARAGRAPH (1)
3 (III), WHY THE INTERESTS OF JUSTICE WILL NOT BE SERVED AND
4 EXPUNGEMENT SHOULD NOT BE ORDERED.

5 (4) Notwithstanding any other law or rule of court, the
6 court shall have no authority to order the expungement of any
7 DNA sample, record or profile in the State DNA Data Bank or
8 the State DNA Data Base except as provided under this
9 subsection.

10 (b.2) Expungement reporting.--A person whose DNA sample, <--
11 record or profile has been expunged under subsection (b.1) THE <--
12 COURT shall forward a certified copy of an expungement order
13 issued under subsection (B) OR (b.1) to the State Police. <--

14 (b.3) Duties of State Police.--The following shall apply:

15 (1) Upon receipt of an expungement order issued under
16 subsection (B) OR (b.1), the State Police shall destroy the <--
17 DNA sample, record and profile in the State DNA Data Bank and
18 the State DNA Data Base pertaining to a person identified in
19 an expungement order.

20 (2) The expungement shall be processed at no cost to the
21 person from whom the DNA sample was taken.

22 (3) The State Police shall provide written notice of the
23 expungement to the person and his attorney of record, if any,
24 within 60 days after destroying the DNA sample, record and
25 profile.

26 (4) The State Police shall publish information regarding
27 the eligibility requirements for expungement under this
28 section and the steps necessary to obtain an expungement
29 under this section on the State Police's publicly available
30 Internet website. THE INFORMATION SHALL INCLUDE A SIMPLIFIED <--

1 FORM PETITION AND PROPOSED ORDER, APPROVED BY THE
2 ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS, WHICH CAN BE
3 USED BY THE PERSON TO REQUEST AN EXPUNGEMENT FROM THE COURT
4 AUTHORIZED UNDER SUBSECTION (B) OR (B.1). The State Police
5 shall publish the information in at least two commonly
6 accessible formats, such as HyperText Markup Language and
7 Portable Document Format.

8 (c) Limitations.--

9 (1) An incarcerated or previously incarcerated person
10 may not seek expungement of a DNA sample, record or profile
11 on the ground that that person was convicted or adjudicated
12 delinquent for a felony sex offense prior to July 27, 1995.

13 (2) A person may not seek expungement of a DNA sample,
14 record or profile on the ground that that person was
15 convicted or adjudicated delinquent for one of the other
16 specified offenses prior to the effective date of the former
17 DNA Act or this chapter.

18 (d) Effect of expungement.--The expungement of a DNA sample,
19 record or profile pursuant to this section shall have no effect
20 on any data bank or data base match or partial match occurring
21 prior to the expungement of the sample, record or profile.

22 § 2322. Mandatory cost.

23 Unless the court finds that undue hardship would result, a
24 mandatory cost of \$250, which shall be in addition to any other
25 costs imposed pursuant to statutory authority, shall
26 automatically be assessed on any person convicted, adjudicated
27 delinquent or granted ARD for criminal homicide, a felony sex
28 offense or other specified offense, and all proceeds derived
29 from this section shall be transmitted to the fund.

30 Section 6. This act shall take effect in 60 days.